



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via e-mail

deltaplancomment@deltacouncil.ca.gov

April 13, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments on the Delta Stewardship Council's Second Staff Draft Delta Plan

Dear Council Members:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau thanks the Delta Stewardship Council ("Council") for the opportunity to provide these comments on the Councils' Second Staff Draft Delta Plan, dated March 18, 2011 ("Second Draft").

General Comments on the Council's Second Draft

Regrettably, having reviewed the Council's Second Draft, we cannot avoid the conclusion that, overall, the current document lacks clarity of purpose and coherence. We offer this criticism, not for the purpose of denigrating the hard work of the Council and its staff and their efforts to date, but rather out of a desire that the Council's Final Delta Plan will be a relevant and useful framework to guide future action on the Delta at the state level. Unfortunately, there is little in the Second Draft to justify optimism, at this point, that the Draft Plan is on such a trajectory.

Without delving too deeply into the specifics of a product major aspects of which will likely require fundamental revision, the remainder of these comments instead focus on a variety

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

of general concepts and recommendations which may prove useful in helping the Council and its staff to reorient the overall approach to this important plan for California. On the whole, we echo the concerns of the broad coalition of affected interests, including Farm Bureau as a co-signatory, as expressed in a recent letter to the Council, dated April 8, 2011, from the Association of California Water Agencies, the Northern California Water Agency, the State and Federal Water Contractors Association, the San Joaquin River Group, *et al.* As the Council moves from its Second to its Third Draft Plan, the time for completion of a Final Plan is growing short. We remain hopeful, nonetheless, that it is not so late that the current direction of the document cannot be substantially corrected and “gotten back on track” in the now relatively short time remaining.

Recommendations for Coming Iterations of the Delta Plan

1. Learning from Existing Plans

While the Delta Plan is fairly unique in many respects, generally, Farm Bureau believes the Delta Plan should take as its model the basic format and approach of other planning documents commonly used for diverse purposes, not only throughout the State of California, but in fact the United States and English law-based societies and systems of government throughout the world.

Perhaps the most universal and familiar model of this kind is that of a city or county general plan. Similar models that lie somewhat closer to the Council’s charge include the San Francisco Bay and Suisun Marsh Protection Plans used by the San Francisco Bay Conservation and Development Commission (“BCDC”) and the Delta Protection Commission’s (“DPC”) Land Use and Resource Management Plan for the Primary Zone of the Delta. Finally, and still closer to home, the Delta Vision Blue Ribbon Task Force’s October 2008 Delta Vision Strategic Plan, as ratified by the State of California’s January 2009 Delta Vision Committee Implementation Report, affords yet another, more or less typical example of a standard planning document.

Such plans consist, typically, of a series of succinctly and generally stated lists of findings, policies, goals, sub-goals, strategies, measures, and the like, arranged under various topic headings, in hierarchical order. These policies, goals, sub-goals, etc. are, in turn, typically tied directly to the planning agency’s regulatory authorities (e.g., a city’s or a county’s police powers, its land use and permitting authorities, etc.).

These basic building blocks of a typical plan may be embellished by a certain amount of explanatory prose, including findings, preambulatory “Whereas...” clauses, statements of general policy or intent, etc. Such content, however, should be generally subordinated to the planning entity’s actual statutory authorities, and its overall mission and sphere of responsibility. Properly, such narrative elements should be used for the purpose of merely illuminating the plan’s policies, goals, objectives, etc., which policies, goals, and objectives themselves should, otherwise, serve as the core operative elements of the plan.

In terms of function, some plans are more passive in nature and limited in scope, for purposes of merely protecting particular resources or values or preventing certain types of harm or regulating certain specific activities, while ensuring overall consistency with a particular set of objectives, in some relatively focused area of public concern (for example, the BCDC's historic concern with the filling of San Francisco Bay, or the Tahoe Regional Planning Agency's primary preoccupation with land use and preservation of key aesthetic values in and around Lake Tahoe). In contrast, other plans, such as a city or county general plan, may combine an agency's express planning, permitting, and regulatory powers with a broader implementation strategy that identifies specific priorities and lays out a particular work plan or schedule to achieve the same over time.

Findings, policies, goals, and sub-goals in most planning documents are typically limited to brief statements of general intent or purpose, sometimes formulated in imperative and sometimes in conditional form (i.e., "land uses *shall* conform" *versus* "land uses *should* conform"). Regardless of the particular linguistic formulation, the net result of such statements is, typically, that actions falling within the planning agencies' area of authority must conform to the various policies, goals, and objectives identified in the plan, or else be denied some necessary approval, etc.

In other cases, such policies, goals, and objectives merely describe some desired (or undesired) state or condition and, in this way, establish some more abstract goal or value to strive toward (or be avoided), consistent with a particular planning body's overarching vision and guidance with respect to a particular subject of direct concern.

In summary, this portion of these comments describes the basic characteristics of perhaps a majority of planning documents commonly used throughout California, the United States, and much of the world. A major advantage of such a structure, and perhaps the key to its wide use and acceptance, is that it provides a way to formulate general policy goals and objectives within an overall conceptual framework, as a way to determine whether subsequently proposed activities lie within the bounds of a particular master plan or vision, under some definite range of legal and regulatory authorities within the planning agencies' direct purview. At present, the current Delta Plan lacks logical structure and unity of purpose to adequately fulfill the basic purpose of an effective plan. To remedy this problem, Farm Bureau recommends a return to "basics," consistent with established planning methods and principles commonly employed in a variety of disciplines, at all levels of government today.

2. Distinguishing between Intended Primary and Secondary Functions of the Council

The Council's unique challenge with the Delta Plan is that, while the Council's direct statutory authorities are fairly narrowly circumscribed, the outer boundaries of its charge are all but statewide in scope. This is not to say that the authorities granted the Council by the Legislature are insufficient to enable the Council to accomplish what it is expected to do, or that those authorities cannot be used effectively to accomplish the Council's core functions. To

succeed, however, it is important that the Council adopt a proper perspective of both its powers and its limitations.

In terms of limitations, first and foremost perhaps, the Council must understand that it is *not*, primarily, a *regulatory* body, and rather that it is primarily a *planning, coordinating, and general policy-setting* body. Second, the Council must understand that the proper focus of its authorities and activities lies in just a few narrowly focused areas, as these relate to a handful of statewide concerns *within the Delta itself*. Other important areas of water policy, including water rights, water quality, groundwater, water efficiency, regional water management, ecosystem restoration and species conservation, flood management, and local land use planning are subjects lying primarily within the responsibility of other agencies, as well as the state and federal legislative powers and the courts.

The geographic scope of the Council's core authorities does *not* extend liberally throughout the whole of the Delta watershed and the extended areas of the state serviced with Delta water. Nor does the Council have expansive powers to co-opt other regulatory agencies and processes. And yet, paradoxically, what occurs in the Delta itself, under a coherent set of statewide policies, goals, and strategies, *can* have a profound influence on what occurs in the rest of the state.

As to its powers then, as opposed to the limits of those powers, the Council must find a way to make appropriate use of its considerable, existing authorities to accomplish what is within the Council's immediate area of responsibility, while at the same time potentially providing other agencies and processes a general framework around which to arrange their own efforts and activities as those agencies, consistent with their own authorities and responsibilities, deem fit.

The basic existing authorities which the Council may employ for these purposes are: (1) its planning and policy-setting authorities with respect to a subset of key statewide interests related to the Delta itself; (2) its "consistency" authorities; (3) its appellate authorities; (4) its authority to review and incorporate in the Delta Plan other related plans as appropriate; (5) its authority to conduct public outreach activities and engage with affected stakeholders; and (6) its authority to consult with other agencies and levels of government to "promote" certain policy objectives and make recommendations in various areas, perhaps outside of its own sphere of authority.

Given this considerable range of expressly conferred powers—or, perhaps, precisely because of it—Farm Bureau believes the Council will meet with the greatest measure of success if the Council concentrates on focusing its impressive reservoir of experience, knowledge, talent on the judicious exercise of its existing authorities, without attempting to annex or appropriate additional powers never extended to the Council by the Legislature in the Delta Reform Act of 2009, or intended to be asserted by it, in areas lying wholly outside of its mandate. In particular, the Council should much more clearly and explicitly define the dividing line between its immediate planning, policy-setting, and regulatory authorities in the Delta *versus* its second-tier "promoting," "recommending," and "consulting" role as an important presence in a variety of

existing venues, as to a number of related areas and activities indirectly impinging on the Council's primary mandate in the Delta. First and foremost, the Council's focus should be the co-equal goals and the Delta as an evolving place, followed, secondarily, by the Council's indirect interest in various other areas of California water policy and water management.

In fact, for purposes of developing the Delta Plan, the Council need not stray far from the statewide "Delta policies" enumerated in section 85020 of the Sacramento-San Joaquin Delta Reform Act of 2009 (SB 7X 1), the "land use goals" listed in subdivision (d) of section 85022, the "performance measures" identified in section 85211, the "subgoals" and "strategies" in section 85300, the "measures" to promote the co-equal goals, and the "subgoals" and "strategies" with respect to the Delta ecosystem found in subdivisions (c) and (d) of section 85302 of the Act.

Non-exempt "covered activities" "carried out, approved, or funded" by a state or local public agency, "occurring, in whole or in part, within the boundaries of the Delta or Suisun Marsh," and that "will have a significant impact on achievement of one or both of the co-equal goals or the implementation of government-sponsored flood control program to reduce risks to people, property, and state interests in the Delta" would be potentially subject to the Council's direct "consistency" and "appeals" authorities.¹ Related plans that satisfy relevant criteria may be incorporated in the Delta Plan.² However, while the Council can potentially provide policy direction and make recommendations in many other areas as these relate to the co-equal goals and other goals and policies affecting key state interests in the Delta and statewide water management, the Council will be elsewhere constrained to rely on other bodies, agencies, or branches of government to make use of their own powers, processes, and independent discretion in areas lying outside of the Council's range of authorities.

Conclusion

Farm Bureau again thanks the Council for the opportunity to offer these comments on the Council's Second Staff Draft Delta Plan. A coherent and attainable state vision for the Delta is

¹ Water Code, § 85057.5, subd. (a). Note: Per section 85058 of the Water Code, "Delta" means "the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code." Per section 85054 of the Water Code, "coequal goals" means "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." Per section 85054 of the Water Code, the "coequal goals" are to be "achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." Per subdivision (c) of section 85022 of the Water Code, legislative findings applicable to "covered actions" in the area of "Delta land use planning and development" include findings that "[e]xisting developed uses, and future developments that are carefully planned and developed consistent with the policies of [the Delta Reform Act of 2009], are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta." Per subdivision (d) of section 85022 of the Water Code, "fundamental goals for managing land use in the Delta" include the legislative goals to "[p]rotect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environmental and its natural and artificial resources," to "[e]nsure the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state," and to "[i]mprove water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta."

² See Public Resources Code, § 29773, subd. (b); Water Code, §§ 85320 and 85350.

unquestionably important to our economy, the Delta itself, the delta smelt and the salmon, and our farmers and the cities they feed. While we believe the current draft misses the mark by a wide margin, there is also no reason to doubt that a minimally acceptable initial Delta Plan by November is at least possible, even if there remain numerous details and aspects of the Plan to be refined later on. Closing on that optimistic note, we look forward to the Council's next iteration and to continuing opportunities to provide feedback on the important work that is the Council's charge.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson
Environment Policy Analyst